ORDINANCE NO. 2050

INTRODUCED BY: AMADOR, BENSON, BULLOCK, CARSON, DOUGLAS, ELLIOTT, FORD, MCELDOWNEY

AN ORDINANCE REPEALING AND REENACTING ARTICLE II OF CHAPTER 8 OF THE COMMERCE CITY REVISED MUNICIPAL CODE TO PROVIDE FOR THE LICENSING OF MEDICAL AND RECREATIONAL MARIJUANA BUSINESS

WHEREAS, the state legislature has enacted the Colorado Medical Marijuana Code and the Retail Marijuana Code, creating a dual-licensing scheme for the operation of marijuana businesses within the state of Colorado; and

WHEREAS, the City Council for the City of Commerce City recognizes that businesses involving the distribution, cultivation, and production of marijuana can have a negative impact on the health, safety, and welfare of a community as well as its resources; and

WHEREAS, the City Council believes that the regulations set forth in this ordinance prescribing the manner in which marijuana businesses are licensed and how such businesses are conducted are necessary and appropriate to protect the health, safety, and welfare of the residents, businesses, and property in the city; and

WHEREAS, the City Council declares that the operation of a marijuana business in the City of Commerce City is a revocable privilege and not a right; and

WHEREAS, the City Council desires that these regulations be construed to protect the public with regard to the conduct of marijuana businesses and hereby specifically directs that these regulations be enforced in a manner that provides no tolerance for a violation of these provisions.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. That Chapter 8, Article II of the Commerce City Revised Municipal Code is hereby repealed and reenacted to read as follows:

ARTICLE II. MARIJUANA BUSINESSES

DIVISION 1. GENERAL PROVISIONS

Sec. 8-2100. Purpose and Intent.

This article is enacted for the purpose of implementing the provisions of C.R.S. tit. 12, arts. 43.3 and 43.4, and regulating the businesses authorized by those laws in a manner that best protects the health, safety and welfare of the public. Nothing in this article is intended to promote or condone the cultivation, manufacturing, sale, distribution, possession or use of marijuana in violation of any applicable law.

Sec. 8-2101. Definitions.

Unless specifically defined otherwise below, the words and phrases used in this article shall have the meanings set forth in the medical marijuana code and the retail marijuana code, as those terms are defined herein. Any words and phrases not ascribed a meaning in such manner shall have their common, ordinary, and accepted meanings.

Applicant means any person who has submitted an application for a license or renewal of a license issued pursuant to this article. If the applicant is not a natural person, the term shall include all persons who are the members, managers, officers, directors, financiers, partners, and shareholders of such entity.

Authority or *marijuana licensing authority* means the local licensing authority for the city.

Business manager means the individual(s) designated by the owner of the marijuana business as responsible for the operation of the business in the absence of the owner from the business premises. *Business manager* shall include any person with managerial authority in the business, and any person that has access to lock or unlock any safe at the premises, to lock or unlock the business, or set or disarm any security alarm at the premises.

Cultivation or *cultivate* means the process by which a person grows a marijuana plant.

License means a document issued by the city officially authorizing the operation of a marijuana business pursuant to this article.

Licensed premise means a distinct and definite location, which may include a building, a part of a building, a room, or any other defined contiguous area, identified in an approved application for the operation of a marijuana business.

Licensee means the marijuana business named on the marijuana business license, and all individuals named in the marijuana business license application or later reported to the city, including, without limitation, owners, business managers, financiers, and individuals owning any part of an entity that holds a financial or ownership interest in a marijuana business.

Marijuana business or *business* means any medical marijuana business and any retail marijuana business.

Medical marijuana business means a medical marijuana center, optional premises cultivation operation, and medical marijuana-infused products manufacturer.

Medical marijuana code means title 12, article 43.3 of the Colorado Revised Statutes, as amended from time to time, and any rules or regulations promulgated thereunder.

Retail marijuana business means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturer, and a retail marijuana testing facility.

Retail marijuana code means title 12, article 43.4 of the Colorado Revised Statutes, as amended from time to time, and any rules or regulations promulgated thereunder.

Sec. 8-2103. Marijuana Licensing Authority.

The marijuana licensing authority is hereby established to act as the local licensing authority for the city. The city council shall appoint a hearing officer to serve, at its pleasure, as the marijuana licensing authority. The marijuana licensing authority shall have all the powers and authority granted to the local marijuana licensing authority by the medical and retail marijuana codes as well as those explicitly granted or reasonably inferred by this code. The marijuana licensing authority's powers shall include, but shall not be limited to, the authority to create its own procedural rules, administer oaths, and to issue subpoenas to require the presence of persons or the production of documents, books and records necessary to the determination of any hearing.

Sec. 8-2104. Appeals of Authority Decisions.

All decisions of the marijuana licensing authority are final, subject only to appeal pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Sec. 8-2105. General and Administrative Penalties and Remedies.

Any person convicted of violating any provision of this article shall be guilty of a misdemeanor and shall be subject to the penalties and remedies set forth in this code. In addition to such general penalties, any applicant or licensee who violates the terms of this article or any provision of the medical or retail marijuana codes, as applicable, shall be subject to such administrative penalties as the authority deems appropriate, including without limitation the suspension, revocation or denial of his/her/its license and the imposition of a fine . A conviction shall be grounds for, but shall not be required prior to, the authority taking action against the license.

DIVISION 2. APPLICATION AND LICENSING.

Sec. 8-2200. Prohibited Licensees.

In addition to the prohibitions set out in state law, a license provided by this article shall not be issued to or held by a person who has been convicted of the offense of operating a marijuana business without a license in the five years immediately preceding the application date.

Sec. 8-2201. Letter of Intent and Pre-Application Meeting.

Prior to the submission of an application for a new license, an applicant shall submit a letter of intent to the city clerk. The letter of intent shall include the name of the individual(s) or entity applying for licensure, contact information for the applicant, the address of the proposed business, the type of license sought, and the size and scope of the business. The city clerk shall schedule a pre-application meeting for the purpose of obtaining additional information from the applicant regarding the size, scope, and feasibility of the proposed business and to provide the

applicant with a more complete understanding of the licensing process. Pre-application meetings are mandatory and a pre-requisite to the submission of an application.

Sec. 8-2202. Applications.

(a) Form and filing. All applications shall be filed with, and on the forms approved by, the city clerk. The city clerk shall review the applications and insure that they are complete. If complete, the city clerk shall promptly submit the application to the authority for action.

(b) Content of application. All applications shall include the materials the city clerk deems necessary or appropriate to assist the authority in rendering its decision on the application. All applications for new licenses shall include plans and specifications for the premises to be licensed, a security plan, evidence establishing the applicant's right to possess such premises during the term of the license, proof that the applicant is permitted to use the premises for the proposed use, all required fees, and such additional materials as the city deems necessary or appropriate to assist the authority in rendering its decision on the application.

(c) Application for renewal. An application for renewal must be filed not less than 45 days but not more than 90 days prior to the expiration of the license. If the licensee fails to apply for renewal at least 45 days prior to the expiration of the license, but does apply prior to the expiration of the license, the city may process the renewal application if the applicant submits a late filing fee, in addition to the renewal application fee, at the time of submittal of the renewal application. The city shall not accept renewal applications after the expiration of the license, but instead shall require the applicant file a new license application.

(d) Incomplete and untimely applications. No application shall be considered which is not complete in every detail in the opinion of the city clerk. Incomplete applications may be returned to the applicant for completion or correction without any further action. It is the licensee's responsibility to ensure the application and all supplemental materials are submitted in a timely manner. Neither the city nor the authority shall be responsible for the failure of a license to be issued or renewed prior to an expiration date because of a late, incomplete or defective application.

Sec. 8-2203. Review - New License Applications.

(a) Neighborhood boundaries. The city clerk shall set the boundaries of the relevant neighborhood, taking into account boundaries previously established for marijuana business licenses in the area. The city clerk shall notify the applicant of such boundaries, and those boundaries shall be deemed accepted unless a written objection is filed by the applicant within five (5) days of receiving notice. If an objection is filed by the applicant, the city clerk shall set the matter for a public hearing before the authority. At the conclusion of the hearing, during which any interested city business owner or resident

shall have the right to be heard, the authority shall establish the boundaries of the relevant neighborhood by either approving or modifying the boundaries set by the city clerk.

(b) Hearing and notice. Upon receipt of a complete application for a new license, the authority shall schedule the matter for hearing not less than 30 days from the date that the application was received by the authority. The hearing shall be open to the public and notice of such hearing shall be posted on the property and published in a newspaper of general circulation in the city not less than 10 days prior to the date of the hearing.

(c) Burden of proof and neighborhood desires. For new license applications, the applicant shall bear the burden of proving that all qualifications for licensure have been satisfied and must also satisfy the authority that the residents of the affected neighborhood desire the business, that the applicant is fit to hold the requested license, and that the applicant is prepared to operate the business in compliance with the requirements of state and local law.

(d) Decision. A license shall be issued if an application is approved. Such license may contain any condition that the authority deems necessary or appropriate to ensure compliance with state and local laws. If an application is denied, the authority shall issue a written decision explaining the reasons for the denial.

(e) Building Occupancy. No license shall be issued until the building in which the business is to be conducted has been issued a certificate of occupancy with all fixtures, furniture, and equipment in place as is necessary to comply with the applicable provisions of this code and state law and then only after the city has completed an inspection of the premises and determined that the applicant has complied with the plans approved by the authority.

Sec. 8-2204. Review - Other Applications.

(a) Public hearing not required. The authority may grant or deny any application other than an application for a new license based solely upon the authority's review of the submitted materials. No public hearing shall be required.

(b) Burden of proof. The applicant shall bear the burden of proving that all criteria for approval have been satisfied.

(c) Decision. If an application is approved, the authority shall provide written notice of such approval. An approval may contain any condition that the authority deems necessary or appropriate to ensure compliance with state and local laws. If an application is denied, the authority shall issue a written decision explaining the reasons for the denial.

(d) Governing law. Renewal of any marijuana business license is subject to the laws and regulations in effect at the time of renewal. Renewal of a marijuana business license is not automatic.

Sec. 8-2205. Licenses and Permits.

(a) License required. No person shall operate a marijuana business within the city unless all required state and local licenses are in full force and effect.

(b) Term of license. A marijuana business license shall be valid for a period of one year from the date of issuance. A marijuana business license is immediately invalid upon expiration of the license, unless the applicant has filed, and the city has accepted, a renewal application and the authority has determined to continue the license beyond the expiration date while the renewal process is pending

(c) Extraction permit required. No person shall conduct any extraction in conjunction with a marijuana business unless the authority has issued an extraction permit and such permit is in full force and effect at the time of the extraction.

(d) Separate and distinct. Each license issued under this article is separate and distinct. It is unlawful for any person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license.

(e) Business premises. A separate license is required for each premise in which a marijuana business is operated. It is unlawful for any person to operate a marijuana business on any premise not licensed by the city. No two businesses may be operated on a single licensed premise.

(f) Fire barriers. Unless higher performance is required by applicable law, there must be a minimum of one-hour fire-resistive rated fire barriers between a marijuana business and any adjacent business.

(g) License nontransferable and nonconvertible. A marijuana business license may not be converted to any other marijuana business license and shall not be transferable or assignable to a different premise or to a different owner. A marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a marijuana business license are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this article.

(h) Relationship to other laws. The license requirement in this article shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law. A license issued pursuant to this article does not provide any exception, defense or immunity to any person in regard to any potential criminal liability the person may have under federal law for the cultivation, possession, sale, distribution or use of marijuana. Upon denial or revocation of a state license, any license issued under this article shall be null and void. If a court of competent jurisdiction determines that the issuance of local licenses violates federal law, all licenses issued under this article shall

be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(i) Waiver. By accepting a license issued pursuant to this article, the licensee waives any claim concerning, and releases the city, its officers, elected officials, employees, attorneys and agents from, any liability for injuries or damages of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers of the licensee for a violation of state or federal laws, rules or regulations.

(j) Indemnification. By accepting a license issued pursuant to this article, all licensees, jointly and severally if more than one, agree to indemnify, defend and hold harmless the city, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the marijuana business that is the subject of the license.

(k) Inactive Licenses. The city may revoke or elect not to renew any license if it determines that the licensed premises has been inactive for at least one year or, in the case of a license approved for a facility that has not been constructed, such facility has not been issued a certificate of occupancy and placed in operation within two years after the approval of the license application.

Sec. 8-2206. Fees.

(a) Fees. All fees, including, without limitation, application, inspection, license, permit, and late filing fees, shall be paid to the city in the amount established by resolution of the city council.

(b) Time of payment. All fees shall be payable at the time an application is submitted to the city clerk.

(c) Payment required. No license shall be issued until after the payment of the fees required by this ordinance.

(d) Refunds. All application and late filing fees shall be non-refundable. License and permit fees shall be refunded only if the license or permit is denied. In the event of a suspension or revocation of a license or permit, or termination of business for any reason whatsoever, no portion of the license fee shall be refunded.

DIVISION 3. OPERATIONAL REQUIREMENTS.

Sec. 8-2300. Compliance with Applicable Laws.

Licensees shall comply with, and conduct their business in compliance with, all applicable state and local laws and the terms of their licenses.

Sec. 8-2301. Onsite Consumption Prohibited.

It shall be unlawful for a person to smoke, eat, or otherwise consume or ingest marijuana or to consume any alcoholic beverages on the premises of any marijuana business and it shall be unlawful for any licensee to allow marijuana to be smoked, eaten, or otherwise consumed or ingested or to allow an alcoholic beverage to be consumed upon its business premises.

Sec. 8-2302. Age Restrictions and Required Verifications.

(a) Age Restrictions. No person under the age of 21 shall be permitted to enter or remain on the property of any marijuana business. Notwithstanding the foregoing, a person who is at least 18 years of age and in possession of a valid registry identification card shall be permitted on the property of a licensed medical marijuana center.

(b) Age Verifications. Retail marijuana stores and medical marijuana centers shall provide a separate reception area for verification of age. Licensee shall verify the proof of age of every person entering the business with an electronic identification scanner. An electronic identification scanner is a device that is capable of quickly and reliably confirming the validity of an identification using computer processes. Any person who fails to produce picture identification or whose picture identification cannot be verified by the electronic identification scanner shall be required to leave the business premises.

(c) Receipts. All receipts for the sale of retail marijuana to consumers must contain the statement: "It is illegal to transfer or sell retail marijuana or retail marijuana products to anyone under the age of 21."

Sec. 8-2303. Display of Licenses and Contact Information.

(a) Licenses. The certificate of occupancy and all licenses or permits issued under this article shall be posted prominently near the front entry of the business premises and shall be displayed at all times.

(b) Contact Information. The name and contact information for the owner(s) and business manager(s) shall be posted prominently near the front entry of the business premises and shall be displayed at all times. Licensees shall provide a copy of this notice to the city and shall update the information, both at the business and with the city, as necessary.

Sec. 8-2304. Hours of Operation.

(a) Retail Marijuana Stores. Retail marijuana stores may only be open to the public between the hours of 8:00 a.m. and 10:00 p.m. daily. No sales or other distribution of marijuana

shall occur upon the premises outside of these hours. Business hours shall be posted at the entrance to the business.

(b) Medical Marijuana Centers. Medical marijuana centers may only be open to the public between the hours of 8:00 a.m. and 7:00 p.m. daily. No sales or other distribution of marijuana shall occur upon the premises outside of these hours. Business hours shall be posted at the entrance to the business.

(c) Cultivation, manufacturing, and testing businesses. Marijuana businesses which cultivate, manufacture, or conduct testing may conduct such business operations on the licensed premises at any time.

Sec. 8-2305. Sales to the Public.

All sales to the public shall be made in person and on the licensed premises of the marijuana business. Conveyance of all marijuana or marijuana products shall occur on the licensed premises of the marijuana business. Absolutely no off-site delivery or drive-through service shall be permitted.

Sec. 8-2306. Public Access Restricted.

Marijuana businesses which cultivate, manufacture, or conduct testing shall not be open to the public. All visitors must be tracked in an entry log identifying the visitor's name, entry and departure times, and purpose of the visit. Visitors must be escorted by a manager or owner at all times.

Sec. 8-2307. Reporting Requirements.

(a) Reports to the authority. Licensees shall provide the authority with:

(1) Notice of a transfer or change of financial interest, business manager, or financier at least 30 days before the proposed transfer or change;

(2) Except for minor traffic infractions, notice of any citation for a violation of any law issued to any licensee within 72 hours of the violation;

(3) Notice of the receipt of a notice of potential violation of any law involving the licensee or the license within 72 hours of receiving such notice; or

(4) A copy of any report that the licensee is required to provide to the state licensing authority within 24 hours of filing the report with the state.

(b) Reports to the police department. Licensees shall report all criminal activities or attempted criminal activity that occurs on the business premises or which are related to the licensed business to the city's police department within twelve hours of occurrence.

Sec. 8-2308. Activities to Occur Indoors.

All marijuana production, manufacturing, cultivation, and sales shall occur indoors and shall not be visible from the exterior of the building. Similarly, all marijuana, marijuana products, marijuana accessories and paraphernalia shall be kept indoors and shall not be visible from the exterior of the building. All marijuana or marijuana products ready for sale shall be in a sealed or locked cabinet except when being accessed for distribution.

Sec. 8-2309. Premises Management.

No marijuana business shall be operated unless an owner or business manager is present. An owner or business manager shall be on the licensed premises and responsible for all activities within the licensed business during all times when the business is operating.

Sec. 8-2310. Odor Control.

All businesses shall be equipped with a system that ensures that no marijuana odor is detectable from the exterior of the business or from within any adjoining premises. Approval of the odor removal system by the building official is required prior to any business being operated. The building official's determination of the adequacy of any proposed odor-removing system shall be based on his reasonable determination of the ability of the proposed system to remove odors as required by this section, which determination shall be based upon the manufacturer's or an engineer's design specifications for the system as they relate to the premises in question.

Sec. 8-2311. Use of Gas Products.

Licensees shall not use or permit the use of any gas product on or in the licensed premises, the use of which is regulated by the building or fire codes, for any reason unless such use has been disclosed to, and approved by, the building official and the fire department.

Sec. 8-2312. Right of Entry and Inspection.

No person shall refuse entry to, or in any manner interfere with the inspection of the licensed premises by any federal, state or local inspector who is either permitted or required to inspect the licensed premises, if such entry is attempted during business hours or during reasonable hours after business hours when there are employees on the premises to admit the federal, state or local inspector. Entry and inspection shall be permitted not only to areas open to the public but also to all other areas where business is conducted, provided that no employee shall be required to accompany any inspector in any area that the employee deems to be dangerous, if the employee informs the inspector of the perceived danger.

Sec. 8-2313. Prompt Response to City Officials Required.

A licensee shall respond by phone or email within 24 hours of contact by a city official concerning its business at the phone number or email address provided to the city as the contact

for the business. Each 24-hour period during which the licensee does not respond shall constitute a separate violation.

Sec. 8-2314. Posting and Display of Notice.

Any notice which is required to be posted under the state or local law shall be posted in a conspicuous place on the licensed premises. Licensees and applicants shall assist in the placement of such notice and shall ensure that such notice is displayed prominently and continuously during the notice period.

Sec. 8-2315. Bank Accounts and Audits.

(a) Separate bank accounts. The revenues and expenses of a marijuana business shall not be commingled in any bank account with the deposits or disbursements of any other business or person.

(b) Audits. The city may require an audit to be made of the records and accounts of a marijuana business on such occasions as it may consider appropriate or necessary. Licensees shall fully cooperate with city officials in the conduct of any audit.

Sec. 8-2316. Cultivation Facilities Organization.

Unless otherwise approved by the fire district and building official, all cultivation facilities shall be organized in orderly rows with unobstructed aisles that are at least three feet wide. There shall be no more than eight feet between aisles or between an aisle and a wall. Clear access to all exits must be maintained at all times.

Sec. 8-2317. Co-location and Separation of Businesses.

It is lawful for more than one marijuana business to be operated from the same location ("co-location") provided that all of the requirements of this section are met.

(a) Separate licenses. Each business shall maintain its own distinct license.

(b) Separate systems. The businesses shall maintain separate operations, ventilation, security, and fire suppression systems and separate public entrances, if any.

(c) Physical separation. The businesses shall be physically divided from floor to roof. Unless higher performance is required by applicable law, there must be a minimum of one-hour fire-resistive rated fire barriers between the businesses.

(d) Records. The businesses shall obtain and keep all delivery documents and manifests for movement of any marijuana or marijuana product between the co-located businesses.

DIVISION 4. UNLAWFUL CONDUCT.

Sec. 8-2400. Unlawful Acquisition.

It is unlawful for any person to buy, sell, transfer, give away or acquire marijuana in violation of state law or this code.

Sec. 8-2401. Registry Identification Card Misuse.

It is unlawful for any person to use the registry identification card of another. It is unlawful for any person to knowingly allow, or fail to prevent, the use of his or her registry identification card by any other person.

Sec. 8-2402. Failure to Cooperate.

It shall be unlawful for any licensee to refuse or fail to cooperate with any city official who is investigating any allegation of unlawful conduct on the licensed premises.

Sec. 8-2403. Growing or Possessing Marijuana without a License.

Except as specifically authorized by law, it shall be unlawful for any person to cultivate or manufacture marijuana or possess more than one ounce of a usable form of marijuana on any commercial or industrial property unless licensed in accordance with this article.

Sec. 8-2404. Unlawful Leases and Uses of Property.

It shall be unlawful for the owner of a building to lease space or allow the use of any portion of the building to be used as a marijuana business unless the tenant has a valid marijuana business license. In the event that the city has an articulable reason to believe that a marijuana business is being operated in a building, it shall be unlawful for the owner of the building to refuse to allow the city access to the portion of the building in which the suspected marijuana business is located to determine whether any marijuana is on the premises.

SECTION 2. This Ordinance shall take effect June 1, 2015.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 4TH DAY OF MAY, 2015.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 1ST DAY OF JUNE, 2015.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk